

A MANAGER'S OVERVIEW

WHAT YOU NEED TO KNOW ABOUT THE FREEDOM OF INFORMATION ACT



**UNITED STATES TRANSPORTATION COMMAND
COMMAND, CONTROL, COMMUNICATIONS AND COMPUTER SYSTEMS
DIRECTORATE
RESOURCES, PLANS AND POLICY DIVISION
RESOURCES INFORMATION BRANCH
RESOURCES INFORMATION COMMUNICATIONS AND RECORDS MANAGEMENT
TEAM**

PREPARED BY:
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COMMAND, CONTROL, COMMUNICATIONS AND COMPUTER SYSTEMS
DIRECTORATE
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TEAM
SCOTT AIR FORCE BASE, ILLINOIS
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INTRODUCTION

The Freedom of Information Act (FOIA), 5 United States Code 552, as Amended, was enacted in 1966 and amended in 1974, 1986, and 1996 to establish the public's right to request existing records from Federal Government agencies. The Electronic FOIA Amendment of 1996 requires agencies to use electronic information technology to enhance the public availability of their FOIA "reading room" records.

While Department of Defense policy is to make the maximum amount of non-exempt information available to the public, we are equally committed to safeguarding our national security, protecting sensitive business information and, not least, preserving personal privacy.

The Combatant Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff, only for the purpose of administering the DOD FOIA Program. This policy represents an exception to the policies directed in DOD Directive 5100.3; it authorizes and requires the Combatant Commands to process FOIA requests in accordance with DOD Directive 5400.7 and DOD Regulation 5400.7.

**YOUR FREEDOM OF INFORMATION ACT (FOIA) OFFICER
AND FOCAL POINT FOR PROCESSING
REQUESTS MADE UNDER THE FOIA IS
CHIEF, RESOURCES INFORMATION COMMUNICATIONS AND RECORDS
MANAGEMENT TEAM (TCJ6-RII)
RESOURCES INFORMATION BRANCH
RESOURCES, PLANS AND POLICY DIVISION
COMMAND, CONTROL, COMMUNICATIONS AND COMPUTER SYSTEMS
DIRECTORATE**

STATUTE AND REGULATION

Title 5, United States Code, Section 552 as Amended.

Department of Defense Directive 5400.7.

Department of Defense Regulation 5400.7.

United States Transportation Command Instruction 33-35.

For further research, see publications located in the Freedom of Information Act Office (TCJ6-RII), Building 1961.

OVERVIEW

All individuals shall have equal rights of access to Federal information; however, we must ensure that information essential for adversaries to plan, prepare, or conduct terrorist or related hostile operations against the United States is denied.

Individuals improperly denied access to records have the right to seek relief through the judicial system.

RESPONSIBILITIES

The Freedom of Information Act (FOIA) Officer, TCJ6-RII, is responsible for administering the FOIA program within USTRANSCOM to include:

- . Administrative processing of FOIA requests.**
- . Assessing appropriate fees.**
- . Maintaining case files and preparing Annual FOIA Report.**
- . Coordinating with agencies, within and outside DOD, having an interest in final response.**
- . Processing appeals of an initial denial for records.**

The OPR for the records requested is responsible for:

- . Conducting a search for requested records, the products of data compilation, regardless of the physical form or characteristics. A USTRANSCOM record responsive to a FOIA request must be USTRANSCOM originated and be controlled by USTRANSCOM. There is no obligation to create or compile a record to satisfy a FOIA request.**
- . Reviewing the requested record or records to determine releasability.**
- . Providing a copy of the requested record along with a sanitized version for release if recommending a partial denial.**
- . Determining exemption and providing rationale when recommending denial or partial denial.**

The USTRANSCOM Legal Advisor, TCJA, is responsible for reviewing all FOIA request responses, providing a written legal opinion discussing legal sufficiency of the proposed action whenever a case is appealed, and providing advice and written legal opinions when necessary.

USTRANSCOM Force Protection, TCFP, is responsible for reviewing all classified records responsive to FOIA requests.

USTRANSCOM Public Affairs, TCPA, is responsible for reviewing all FOIA request responses to be aware of any potential sensitive subjects.

RECOGNIZING A FREEDOM OF INFORMATION ACT (FOIA) REQUEST

A written request (US Postal Service, electronic mail, or facsimile) that reasonably describes USTRANSCOM record(s) requested by a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal Agency or fugitive from the law, that either explicitly or implicitly invokes the FOIA, DOD Regulation 5400.7, or a component's supplementing regulation or instruction(s).

Requests received by facsimile or electronically must have a postal mailing address included since it may not be practical to provide a substantive response electronically.

Immediately upon receipt of this type of request by a USTRANSCOM directorate/direct reporting element, forward to the USTRANSCOM FOIA Officer, TCJ6-RIL, for processing.

TIME CONSTRAINTS

Generally, a final response determination will be made within the statutory 20 working days (excluding weekends and Federal holidays). If a significant number of requests, or the complexity of the requests prevents a final response determination within the statutory time period, the requester will be advised of this fact through an interim response explaining how the request will be responded to within its multitrack processing system.

***Simple Requests.* A processing queue for simple requests based on a first-in, first-out concept.**

***Complex Requests.* A processing queue for complex requests based on complexity (search time involved to locate responsive records, review of responsive records, referral of responsive records to other agencies for review, and/or designation of fee category).**

***Expedited Requests.* An expedited processing queue for requests indicated as such and demonstrating a compelling need for the information. Expedited requests will be processed as soon as practicable.**

- . *Compelling Need.* Failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.**
- . *Compelling Need* also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity.**
- . *Urgently Needed.* The information has a particular value that will be lost if not disseminated quickly.**
- . *Other Reasons.* Other reasons that merit expedited processing are an imminent loss of substantial due process rights and humanitarian needs/promote the welfare and interests of mankind.**

RECORDS EXEMPT FROM DISCLOSURE

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law, and as more fully described in DOD Regulation 5400.7.

Exemption 1 (5 U.S.C. 552 (b) (1)). Records properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order.

Exemption 2 (5 U.S.C. 552 (b) (2)). Low 2: Records related solely to the internal personnel rules and practices of the respective agency of a relatively trivial nature. High 2: Records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records and substantially hinder the effective performance of a significant function of the respective agency. High 2 exemption must be prepared to present a sound legal basis in support of determination.

Exemption 3 (5 U.S.C. 552 (b) (3)). Records concerning matters that a statute specifically exempts from disclosure, by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld.

Exemption 4 (5 U.S.C. 552 (b) (4)). Records containing trade secrets or commercial or financial information received from a person or organization outside the Government with the understanding that the information or record will be retained as privileged or in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the respective agency and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impairs the Government's ability to obtain necessary information in the future, or impairs some other legitimate Government interest.

Exemption 5 (5 U.S.C. 552 (b) (5)). Records containing information considered privileged in litigation, primarily under the deliberative process privilege. In order to qualify for this exemption, records must be both deliberative in nature, as well as part of a decision making process.

Exemption 6 (5 U.S.C. 552 (b) (6)). Records containing information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited and could subject the releaser to civil and criminal penalties.

Exemption 7 (5 U.S.C. 552 (b) (7)). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law. Information that, if released, could reasonably be expected to interfere with enforcement proceedings; would deprive a person of the right to a fair trial or to an impartial adjudication, or could constitute an unwarranted invasion of personal privacy of a living person, including surviving family members and/or could reasonably be expected to endanger the life or physical safety of an individual.

Exemption 8 (5 U.S.C. 552 (b) (8)). Records containing information relating to the examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions. *Not normally applicable to DOD.*

Exemption 9 (5 U.S.C. 552 (b) (9)). Records containing geological and geophysical information and data (including maps) concerning wells. *Not normally applicable to DOD.*

ASSESSMENT OF FEES

Fees are charged to certain types of requesters reflecting direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA; however, waivers or reductions in fees are given if disclosing the information is in the public interest. Public interest is defined as "information which significantly enhances the public's understanding of Government operations and activities." Fee categories include:

Commercial. The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. Fees for commercial requesters are limited to reasonable standard charges for document search, review, and duplication. Requesters must reasonably describe the records sought. Commercial requests should express willingness to pay all search, review, and duplication costs.

Educational or Non-Commercial Scientific Institution or News Media. Requesters in this category should indicate a willingness to pay duplication charges in excess of 100 pages, if more than 100 pages of records are desired.

- . *Educational Institution.* The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education which operates a program or programs of scholarly research.
- . *Non-Commercial Scientific Institution.* The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.
- . *News Media.* The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their product available for purchase or subscription by the general public.
- . *All Other Requesters.* Requesters who do not qualify in the categories above are considered "other" requesters and normally make requests for agency records for their personal use. "Other" requesters receive two hours of search time, all review costs, and duplication of the first 100 pages at no cost.

Requesters should submit a willingness to pay fees regardless of the fee category. Except for commercial requesters whose fees total more than \$15, waivers are always considered. Fee waivers may be granted when disclosure of the records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.

SUMMARY

Remember, consult the Freedom of Information Act Office if you receive a request or have questions concerning the FOIA.

USTRANSCOM FOIA OFFICER

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